

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

IRA LATHAN Jr.,

Plaintiff,

V.

W. MARKHAM *et al.*,

Defendants.

Case No. C05-5549RBL

REPORT AND RECOMMENDATION:

**NOTED FOR:
January 7th, 2006**

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion to dismiss. (Dkt. # 11). The motion was filed three days before an answer was received. Plaintiff indicates he wishes to dismiss this action and be relieved of the filing fee. (Dkt # 11).

DISCUSSION

Fed.R.Civ.P. 41(a)(1) gives a plaintiff the right to dismiss an action prior to an answer being filed. The plaintiff may simply file a notice of dismissal. The court considers plaintiff's motion to be such a notice. Plaintiff will still have to pay the filing fee in this action, but the action should be dismissed without prejudice based on plaintiff's motion.

1 CONCLUSION

2 The court should consider plaintiff's motion as a notice of dismissal and this action should be
3 **DISMISSED WITHOUT PREJUDICE.** Plaintiff must still pay the filing fee in this case. A
4 proposed order accompanies this Report and Recommendation.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
6 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
7 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
8 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
9 72(b), the clerk is directed to set the matter for consideration on **January 7th, 2006**.

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DATED this 8th day of December, 2005.



12 Karen L. Strombom
13 United States Magistrate Judge
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